U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-S-S- INC.

DATE: NOV. 22, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software development and education business, seeks to employ the Beneficiary as a senior programmer analyst. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act), section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director, Nebraska Service Center, denied the petition, finding that the record did not establish that the Beneficiary held the advanced degree required by the labor certification or that the Petitioner had the ability to pay the proffered wage.

The matter is before us on appeal. The Petitioner asserts that the Director did not properly evaluate the Beneficiary's degree, and did not provide it with potentially derogatory information, as required by regulation. It also claims that the Director erred in his calculation of its ability to pay the proffered wage.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration is generally a three-step process. First, an employer must obtain an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Next, U.S. Citizenship and Immigration Services (USCIS) must approve an immigrant visa petition. *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, the foreign national must apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by DOL, accompanies the instant petition. By approving the labor certification, DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position. Section 212(a)(5)(A)(i)(I) of the Act. The DOL also certifies that the employment of

a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. Section 212(a)(5)(A)(i)(II) of the Act.

In visa petition proceedings, USCIS determines whether a foreign national meets the job requirements specified in the underlying labor certification and the requirements of the requested immigrant classification. *See* section 204(b) of the Act (stating that USCIS must approve a petition if the facts stated in it are true and the foreign national is eligible for the requested preference classification); *see also, e.g., Tongatapu Woodcraft Haw., Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983) (both holding that USCIS has authority to make preference classification decisions).

The priority date of a petition is the date that DOL accepts the labor certification for processing. *See* 8 C.F.R. § 204.5(d). The priority date is used to calculate when the beneficiary of a visa petition is eligible to adjust his or her status to that of a lawful permanent resident. *See* 8 C.F.R. § 245.1(g). A petitioner must establish the elements for the approval of the petition at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. §§ 204.5(g)(2), 103.2(b)(l), (12); *see also Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In the present matter, the issues before us are: (1) whether the Beneficiary possesses the advanced degree required by the labor certification; and (2) whether the Petitioner has demonstrated its ability to pay the Beneficiary the proffered wage.

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

A petition for an advanced degree professional must be accompanied by a valid, individual labor certification, an application for Schedule A designation, or documentation of a beneficiary's qualifications for a shortage occupation. 8 C.F.R. § 204.5(k)(4)(i). The job offer portion of a labor certification must demonstrate that the job opportunity requires a professional holding an advanced degree or its equivalent. *Id.*

As previously noted, the proffered position in this matter is that of a senior programmer analyst. The labor certification states the following requirements for the position:

H.4.	Education: Master's.
H.4-B.	Major field of study: Computer science or engineering.
H.5.	Training: None required.
H.6.	Experience in the job offered: Required.
H.6-A.	Number of months experience required: 24.
H.7.	Alternate field of study: None accepted.
H.8.	Alternate combination of education and experience: None accepted.
H.9.	Foreign educational equivalent: Accepted.
H.10.	Experience in an alternate occupation: Not accepted.

Accordingly, to qualify for the offered position, the Beneficiary in this case must hold a U.S. master's or foreign equivalent degree in computer science or engineering, and have 24 months of experience in the offered position of senior programmer analyst. No other degree or employment experience will qualify the Beneficiary for the job opportunity.

In Part J. of the labor certification, the Beneficiary indicates that he holds a 1999 master's degree in computer applications from [redacted] in [redacted] India.

To establish the Beneficiary's academic qualifications for the job opportunity, the Petitioner has submitted the following evidence:

- A June 8, 2000, degree certificate from the [redacted] which reflects the Beneficiary's completion of the course of studies required for a master's degree in computer applications as of August 1999, which is accompanied by the Beneficiary's academic transcripts;
- A February 17, 2003, certificate issued by [redacted] which reflects that the Beneficiary, in February 1996, successfully passed his final examinations for a 3-year bachelor of science degree in geology, which is supported by a copy of the Beneficiary's examination marks; and
- A February 12, 2016, evaluation of the Beneficiary's academic credentials, prepared by [redacted]

On November 25, 2015, the Director issued a request for evidence (RFE), notifying the Petitioner that while the record demonstrated that the Beneficiary held a foreign degree equivalent to a U.S. master's degree in computer applications, it was not a degree in computer science or engineering, as required by the labor certification. The Director also advised the Petitioner that the evidence of record did not establish its ability to pay the Beneficiary the proffered wage, as no evidence had been submitted to demonstrate its ability to pay the proffered wages of the other beneficiaries for whom it had also filed Form I-140 petitions. To establish its ability to pay, the Director asked the Petitioner to provide a listing of all the beneficiaries for whom it had filed Forms I-140, identifying their proffered wages, priority dates, and status. The Director also requested documentary evidence of the wages the Petitioner had paid to these beneficiaries, and, where such wages were lower than their proffered wages, proof of its ability to pay the difference.

In its February 22, 2016, response, the Petitioner provided a copy of a February 12, 2016, academic equivalency evaluation prepared by [redacted] of [redacted] which found the Beneficiary's [redacted] master's degree to be the equivalent of a U.S. master of science in computer science and applications. To establish its ability to pay the proffered wage, the Petitioner provided a listing of the nine Form I-140 beneficiaries for whom it had filed Form I-140 petitions from January 2014 to the present, noting that it had withdrawn two of the petitions and that a third had been denied; a second copy of its Form 1120 for 2014; 2014 and 2015 Forms W-2 for the individuals

listed on its chart, including the Beneficiary; and its Forms 941, Employer's Quarterly Federal Tax Returns, for 2014 and 2015, accompanied by copies of Statements of Deposits & Filings by state. In submitting its financial evidence, the Petitioner asserted that the cash reserves of $520,542 ($435,858 in liquid assets and $84,684 in net income) reflected on its 2014 tax return were proof of its ability to cover the proffered wages of the Beneficiary and the other beneficiaries for whom it had filed Form I-140 petitions.

On April 14, 2016, the Director denied the visa petition. The Director concluded that the Petitioner had not demonstrated that the Beneficiary's master's degree in computer applications was in a field required by the labor certification. The Director also determined that the Petitioner had not established its ability to pay the proffered wage, as it had miscalculated its proffered wage obligation, and, further, that its reliance on what it termed its liquid assets was misplaced. In the absence of evidence establishing the Beneficiary's qualifications for the job opportunity and the Petitioner's ability to pay the proffered wage, the Director denied the Form I-140.

On May 12, 2016, the Petitioner appealed the Director's decision. At that time, it checked the box in Part 3.1.b. of the Form I-290B, Notice of Appeal or Motion, indicating that it would submit brief and/or additional evidence to this office within 30 calendar days. As of this date, however, the record contains no additional materials filed by the Petitioner in support of the visa petition. Accordingly, we consider the record to be complete.

III. ANALYSIS

A. Beneficiary Qualifications

In the present matter, the Petitioner has filed the immigrant visa petition for the Beneficiary as an advanced degree professional under section 203(b)(2) of the Act.

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." Section 101(a)(32) of the Act lists the following occupations as professions: "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

A petition for an advanced degree professional must be accompanied by a valid, individual labor certification, an application for Schedule A designation, or documentation of a beneficiary's qualifications for a shortage occupation. 8 C.F.R. § 204.5(k)(4)(i). The job offer portion of a labor certification must demonstrate that the job opportunity requires a professional holding an advanced degree or its equivalent. *Id.*

As previously noted, the proffered position in this matter is that of a senior programmer analyst and requiresa U.S. master's or foreign equivalent degree in computer science or engineering, and 24 months of experience in the offered position of senior programmer analyst. No other degree or employment experience will qualify the Beneficiary for the job opportunity.

The record demonstrates that the Beneficiary possesses a 1999 master's degree in computer applications from [redacted] in [redacted] India, and 24 months of experience in the job offered.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *Madany v. Smith*, 696 F.2d at 1012-13. We must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the plain language of the alien employment certification application form. *Id.* at 834.

A petitioner must establish a beneficiary's possession of all the education, training, or experience stated on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(1), (12); *see also Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In his decision, the Director concluded that submitted evidence did not establish that the Beneficiary held a foreign degree equivalent to a U.S. master's degree in computer science or engineering, as required by the labor certification. In reaching his decision, the Director relied, in part, on the credentials advice provided by the Electronic Database for Global Education (EDGE), a web-based resource for the evaluation of foreign educational credentials created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[1] The Director noted that the credentials advice in EDGE reflected that an Indian master's degree in computer applications was comparable to

[1] According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.*

a U.S. master's degree in computer applications, not computer science. Accordingly, he found that the Beneficiary did not hold the degree required by the labor certification.

On appeal, the Petitioner asserts that the Director "failed to review" the submitted evaluation of the Beneficiary's academic qualifications, which is "the product of an evaluation carried out by an independent expert" and made his "misinformed decision based on a misplaced reliance upon a Subscription Database paid for by USCIS." The Petitioner further contends that the Director did not provide it with "copies of any potentially derogatory information, [i]n accordance with the regulations."

We note the Petitioner's submission of a credentials evaluation prepared by of review of the Beneficiary's academic credentials finds his 1996 bachelor of science degree in geology from when combined with his 3-year master of computer applications from to provide him with the equivalent of a master of science in computer science and applications from an accredited U.S. university. Credentials evaluations, however, are used by USCIS as advisory opinions only and where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.* 19 I&N Dec. 817 (Comm'r 1988).

Here, we do not find the submitted evaluation from to be sufficient to establish that the Beneficiary holds the advanced degree in the field of study required by the labor certification. While evaluation finds the Beneficiary's degree to be the equivalent of a U.S. master's degree in computer science and applications, it is not clear that such a degree exists in the United States. The evaluation references no U.S. master's degree programs where these two academic disciplines are combined. Neither does it compare the curriculum outlined in the Beneficiary's transcripts from with that required for a U.S. master's degree in computer science. Moreover, website indicates that its Department of Computer Science & Engineering offers a 2-year M. Tech in Computer Science in addition to its 3-year Master of Computer Applications, thereby appearing to distinguish its academic requirements for a computer science degree from those required for a degree in computer applications, and leading us to conclude that it does not consider the Beneficiary's degree to be in the field of computer science.

Moreover, evaluation conflicts with information available from EDGE. As indicated by the Director, EDGE reports that an Indian master of computer applications "represents attainment of a level of education comparable to a master's degree in the United States," but that it is "[c]omparable to a degree in computer application, not computer science."

To overcome the credentials advice provided by EDGE, the Petitioner, as previously noted, asserts that this information comes from a subscription database paid for by USCIS and is, therefore, less reliable than the expert opinion prepared by However, contrary to the Petitioner's assertions, we find EDGE to offer a reliable, peer-reviewed source of information about foreign credentials equivalencies, which routinely guides, but does not compel, USCIS determinations regarding academic equivalencies.

In *Confluence Intern., Inc. v. Holder,* 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that this office had provided a rational explanation for our reliance on information provided by AACRAO to support our decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary's 3-year foreign "baccalaureate" and foreign "Master's" degrees were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary's 3-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion.

Therefore, for the reasons noted above, we do not find the credentials evaluation submitted by the Petitioner to establish that the Beneficiary holds a foreign degree equivalent to a U.S. master's degree in computer science. Accordingly, the record does not demonstrate that the Beneficiary's has the degree in computer science or engineering required by the labor certification.

Although the Petitioner on appeal states that the Director failed to provide it with "potentially derogatory information," in accordance with regulation, the Petitioner does not identify the potentially derogatory information that it claims was not provided. Therefore, we do not address this claim.

B. Ability to Pay

The Director's denial of the immigrant visa petition was also based on his determination that the record did not contain sufficient evidence to establish the Petitioner's continuing ability to pay the Beneficiary the proffered wage during the relevant period. For the reasons that follow, we will affirm the Director's ability to pay determination.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

A petitioner must establish that its job offer to a beneficiary is a realistic one. Because the filing of a labor certification application establishes a priority date for any immigrant petition later based on the labor certification, a petitioner must establish that the job offer was realistic as of the priority date and that the offer remains realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. A petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see*

also 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, USCIS requires a petitioner to demonstrate financial resources sufficient to pay a beneficiary's proffered wage, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In the present case, the priority date of the visa petition is June 4, 2014. Part G.1. of the labor certification reflects that the proffered wage in this matter is $98,675 per year. Therefore, the Petitioner must demonstrate its ability to pay the Beneficiary the annual wage of $98,675 from June 4, 2014, onward.

To determine a petitioner's ability to pay the proffered wage, USCIS first examines whether a petitioner was employing the beneficiary as of the date on which the labor certification was accepted for processing by DOL and whether it continues to do so. If a petitioner documents that it has employed the beneficiary at a salary equal to or greater than the proffered wage, that evidence may be considered proof of its ability to pay pursuant to 8 C.F.R. § 204.5(g)(2). If a petitioner does not demonstrate that it employed and paid the beneficiary at an amount at least equal to the proffered wage during the required period, USCIS then examines the net income figure reflected on the petitioner's federal income tax returns, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. Filed Nov. 10, 2011).[2] If a petitioner's net income during the required time period does not equal or exceed the proffered wage, or when added to any wages paid to the beneficiary does not equal or exceed the proffered wage, USCIS reviews its net current assets.

In cases where neither a petitioner's net income nor its net current assets establish its ability to pay the proffered wage during the required period, USCIS may also consider the overall magnitude of its business activities. *Matter of Sonegawa*, 12 I&N Dec. at 612. In assessing the totality of a petitioner's circumstances, USCIS may look at such factors as the number of years it has been in business, its record of growth, the number of individuals it employs, abnormal business expenditures or losses, its reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence it deems relevant.

Where a petitioner has filed Forms I-140 for multiple beneficiaries, it must also demonstrate that its job offer to each beneficiary is realistic, and that it has the ability to pay the proffered wage to each. *See* 8 C.F.R. § 204.5(g)(2); *see also Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries). In determining whether a petitioner has established its ability to pay the proffered wage to multiple beneficiaries, USCIS adds together the proffered wages for each beneficiary for

[2] Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. V. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang. v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); K.*C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

each year starting from the priority date of the petition being adjudicated, and analyzes the petitioner's ability to pay the combined wages. However, the wages offered to the other beneficiaries are not considered after the dates any beneficiary obtained lawful permanent residence, or after the date a Form I-140 petition was withdrawn, revoked, or denied without a pending appeal. In addition, USCIS will not require a petitioner to establish the ability to pay additional beneficiaries for any year that the beneficiary of the petition under consideration was paid the full proffered wage.

The record in the present matter does not demonstrate that the Petitioner paid the Beneficiary the proffered wage of $98,675 during 2014 and 2015, the period considered by the Director. The Beneficiary's Forms W-2, Wage and Tax Statements, for 2014 and 2015, reflect wages of $81,619.81 and $67,595.03 respectively. Further, a review of USCIS databases finds that the Petitioner had multiple Form I-140 petitions both approved and pending during these years. Accordingly, to establish its ability to pay in this matter, the Petitioner must demonstrate that, during the relevant period, it had the ability to pay not only the proffered wage of $97,675 to the Beneficiary but also the proffered wages of those beneficiaries for whom Form I-140 petitions were approved or pending.

As previously indicated, the Petitioner has provided a chart that lists nine Form I-140 beneficiaries (including the Beneficiary in this case) for which it has filed Forms I-140 since January 2014. Of the nine, the Petitioner states that it has withdrawn two of the petitions and that a third has been denied, leaving it with an obligation to pay the proffered wages of the Beneficiary and five others. The chart indicates the proffered and actual wages for these six individuals, and the record contains copies of their 2014 and 2015 Forms W-2.

Based on our review of the record and of USCIS databases, we do not find the Petitioner's calculation of its combined proffered wage obligation in this matter to be accurate.

The Petitioner states that it is not required to establish its ability to pay the proffered wages of two of the beneficiaries included in its chart because it has withdrawn the Forms I-140 it filed on their behalf. It also asserts that it is freed from its proffered wage obligation in the case of a third beneficiary, based on USCIS' denial of the Form I-140 benefitting him. However, while it may have withdrawn two of the Forms I-140 it filed since January 2014 and a third Form I-140 may have been denied, the Petitioner is still required to establish that it had the ability to pay the proffered wages in these cases while they were pending with USCIS.

We note that [redacted] which the Petitioner filed on August 22, 2014, was not withdrawn until June 19, 2015, requiring the Petitioner to establish its ability to pay the proffered wage to this beneficiary in both 2014 and 2015.[3] The Petitioner filed the second petition, [redacted] on May 12, 2015, and did not withdraw it until April 4, 2016. As a result, it must establish that it had

[3] Generally, a petitioner must establish that it has the ability to pay the proffered wage for the entire year in which a visa petition is filed. We will consider prorating a proffered wage only if the record contains evidence of net income or payment of a beneficiary's wages specifically covering the portion of the year that occurred after the priority date (and only that period), such as monthly income statements or pay stubs.

an ability to pay the proffered wage to this beneficiary at least during 2015. The Petitioner filed the third petition, [redacted] on August 19, 2014. As it was not denied by USCIS until June 2, 2015, the Petitioner must establish its ability to pay this individual the proffered wage in both 2014 and 2015. Accordingly, we do not find the chart submitted by the Petitioner to establish its combined proffered obligation to those beneficiaries for whom it has filed Forms I-140 since January 2014.

Further, USCIS databases reflect that, as of the June 4, 2014, priority date, the Petitioner had previously filed for at least 22 beneficiaries whose visa petitions had been approved. Based on USCIS records, none of these individuals have, to date, acquired lawful permanent resident status. Therefore, pursuant to the regulation at 8 C.F.R. § 204.5(g)(2), the Petitioner must also establish its ability to cover the proffered wages of these earlier beneficiaries. While the 2014 and 2015 Forms 941 information submitted by the Petitioner may reflect the wages paid to some of these individuals, no evidence in the record establishes the proffered wages associated with their positions, thereby precluding an analysis of the Petitioner's ability to pay. Accordingly, the record does not demonstrate the Petitioner's ability to pay the proffered wage from the June 4, 2014, priority date onward.

Even if we accepted the Petitioner's assertion that its proffered wage obligation extends only to the six beneficiaries it has identified on its chart, we would not find the record to establish its ability to pay in this matter. In its response to the Director's second RFE, the Petitioner calculated the difference between its proffered wage obligation to these six individuals and the actual wages paid them as being $108,094.47, which, it asserted, could be covered by the $520,542 in cash reserves ($84,684) and liquid assets ($435,858) reflected on its 2014 Form 1120. The Petitioner also stated that it had an additional $500,000 in officer compensation that could be "readjusted" to cover the $108,094.47 shortfall. The Petitioner's claims are not supported by the record.
We initially note that the Petitioner miscalculated the shortfall between the six beneficiaries' proffered and actual wages by simply totaling the wages paid to all six, including the wages of the two individuals who were paid salaries in excess of their proffered wages. However, as indicated by the Director, the higher wages paid to these individuals may not be used to offset the Petitioner's proffered wage obligation to the four remaining beneficiaries. Accordingly, the difference between the Petitioner's combined proffered wage obligation to the six beneficiaries and their actual wages is $118,121.50, rather than $108,094.47.

Further, the Petitioner's 2014 Form 1120 does not establish that it had $520,542 in cash reserves and liquid assets to cover its combined proffered wage obligation. The $435,858 the Petitioner described as its liquid assets is, instead, the "Total assets" reported on its Form 1120 (Schedule L). When appropriately reduced by the Petitioner's liabilities, the $435,858 becomes $78,183 in net current assets, which is insufficient to meet the corrected shortfall of $118,121.50 noted above and which may not be added to the Petitioner's net income to overcome this deficiency. While the Petitioner previously combined its net current income and total assets to assert that it had $520,542 available to

pay its combined proffered wage obligation, a petitioner may not combine net income and net current assets to establish its ability to pay.[4]

Finally, we do not find the record to establish that the Petitioner could have covered the difference between its combined proffered wage obligation and the actual wages it paid the six beneficiaries from the $156,000 in officer compensation reported on its 2014 Form 1120. While officer compensation is an expense category explicitly stated on tax returns and may, therefore, be considered as an additional financial resource in determining a petitioner's ability to pay, we find the Petitioner in the present matter to have submitted no evidence that demonstrates these funds were available for its use in covering its proffered wage obligation. The record contains no statement from either of the Petitioner's shareholders[5] that establishes their willingness or ability to forgo either all or a portion of the $78,000 in compensation each received in 2014. A petitioner cannot meet its burden of proof in immigration proceedings simply by claiming a fact to be true, without supporting documentary evidence. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *see also Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner must support assertions with relevant, probative, and credible evidence. *Chawathe* at 369.

Therefore, for the reasons just discussed, the record does not establish that the Petitioner has the ability to pay the Beneficiary proffered wage in this matter.

IV. CONCLUSION

The Petitioner has not established that the Beneficiary holds the advanced degree required by the labor certification or that it has the ability to pay the proffered wage to the Beneficiary from the priority date forward. Therefore, the petition may not be approved.

In visa proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, we will affirm the Director's denial of the visa petition and dismiss the appeal.

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[4] We view net income and net current assets as two different methods of demonstrating ability to pay, one retrospective and one prospective. Net income is retrospective in nature as it represents those monies remaining after a petitioner has paid all its expenses from the previous tax year. Net current assets offer a prospective "snapshot" of the net total of a petitioner's assets that will become cash within a relatively short period of time minus those expenses that will come due within that same period. Further, combining net income and net current assets might result in the double counting of certain figures in cases where a petitioner reports taxes pursuant to accrual, e.g., cash on hand and accounts receivable.

[5] The two shareholders are listed on Form 1125-E, Compensation of Officers, which reflects that each owns a 50 percent interest in the Petitioner and received $78,000 in compensation in 2014.

ORDER: The appeal is dismissed.

Cite as *Matter of U-S-S- Inc.*, ID# 45711 (AAO Nov. 22, 2016)